

Alex,

I have been out of town but would like to suggest some recommendations to you that hopefully you will be able to incorporate into the Monday afternoon discussions.

Recommendation No. 1

Expand the State Engineer's authority to promulgate basin rules for the administration of water rights including ground water rights. This modification to CRS, 37-92-501 would allow the State Engineer to approve for a period of up to five years annual replacement plans for various entities seeking to operate in accordance with the rules while the entity was developing the final details of a plan for augmentation to be filed with the Water Court at the end or during the five year period after the rules became final for a river basin. The rules for the Arkansas River basin give the State Engineer the authority to annually approve a replacement plan but the Colorado Supreme Court ruled that such authority does not currently exist in state statutes elsewhere in the state in **Bijou v. Simpson**. The State Engineer will potentially be promulgating rules for the use of ground water in the following river basins:

1. Republican River
2. Rio Grande
3. Gunnison River
4. Colorado River
5. South Platte River

The addition of this flexibility will allow the water users impacted by the rules reasonable time to develop plans for augmentation that comply with the rules but may allow some start up time if allowed by the rules. I did this with the 1996 Arkansas River basin use rules by allowing a year of reduced replacement with full replacement in year 2. These rules also did not require replacement of depletions from pumping prior to 1996 since pumping before 1996 was legal so it was difficult to justify requiring replacement of depletions from pumping prior to the first year that the rules went into effect. It is my opinion that the same argument holds for the 1974 South Platte rules and any pumping prior to this date was legal and therefore, depletions do not have to be replaced for pumping prior to 1974.

Recommendation No. 2

I would recommend modifying the water court process for approval of plans for augmentation or changes in use by having the Water Referee be a Professional Engineer who would conduct a formal hearing on the technical merits of the case and issue a findings approving, disapproving, or modifying the application. A party could ask the Water Court Judge to review the findings and review the record but not hold a new trial. Any legal motions could be referred to the Water Court Judge for determination. I believe this would allow the Water Court Judges more time to deal with the legal issues and other court matters assigned to the Judge but would allow the often technical aspects

of the case to be heard in front of the Referee. The Referee would have the technical experience to evaluate the testimony and exhibits of various experts without placing this burden on the Water Court Judge who does not have the technical expertise to truly understand some of the complex engineering issues involved in the contested cases. I think this would streamline the process and make it more efficient and less confrontational. This action would require modification of CRS 37-02-303 and 304.

Recommendation No. 3

I would recommend that creation of a South Platte River Water Conservation District be discussed and if found desirable, the Colorado Legislature establish such an entity by statute at the appropriate time. Colorado currently has four Water Conservation Districts established by specific legislation for each. They are the Colorado, Southwestern, Rio Grande, and Republican River Water Conservation Districts. The Republican River WCD was established in 2004 to assist the state with compliance with the Republican River compact(Article 50 of Title 37) While establishing a Water Conservation District for the South Platte may be difficult due to the many water providers and conservancy districts in the South Platte, it could provide the entity that could coordinate, fund and assist with resolving the many issues the South Platte River basin water users are facing such as the Platte River Recovery Implementation Program, the optimum use of the water resources of the basin including conjunctive use of ground and surface water supplies, compliance with the South Platte River Compact, construction of additional storage for existing and future demands, and addressing the water supply needs of a growing population along the Front Range while sustaining agriculture.

Hopefully, you will see these recommendations tomorrow early but if not I will bring a hard copy to give to you and Dick.

Hal